

AMENDED IN ASSEMBLY AUGUST 13, 1998

AMENDED IN ASSEMBLY AUGUST 10, 1998

AMENDED IN ASSEMBLY JULY 30, 1998

AMENDED IN ASSEMBLY JUNE 29, 1998

AMENDED IN ASSEMBLY JUNE 17, 1998

AMENDED IN SENATE APRIL 21, 1998

SENATE BILL

No. 2239

**Introduced by Committee on Business and Professions
(Senators Polanco (Chair), Ayala, Craven, Greene, Kelley,
Lee, O'Connell, and Rosenthal)**

March 9, 1998

An act to amend Sections 120, 125.7, 1621.1, 1632, 1633.5, 1763, 2067, 2103, 2225.5, 2239, 2242, 2350, 2355, 3512, 3516.5, 3517, 3519, 3520, 3521.2, 3523, 3524, 3526, 3527, 3528, 3530, 3534.1, 3534.3, 4301, 4322, 5053, 5055, 5056, 5060, 5070.6, 5072, 5073, 5104, 5134, 7622.3, 7651, 8742, 8773.1, 8773.2, and 13660 of, to add Sections 4301.5 and 5058.1 to, and to repeal Sections 1621.2, 5059, 5070.1, 5071, 5074, 5075, 5076, and 5153 of, the Business and Professions Code, to amend Sections 11371 and 11529 of the Government Code, and to amend Section 11166 of, and to repeal and add Section 11167 of, the Health and Safety Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 2239, as amended, Committee on Business and Professions. Professions and vocations.

(1) Existing law provides for an examining committee of the Board of Dental Examiners, to consist of 100 members.

This bill would instead provide for the board to appoint an unspecified number of members.

(2) Existing law regulating dentistry prohibits the practice of dentistry unless a person has a valid, unexpired license or special permit from the Board of Dental Examiners of California. Licensure requires passage of an examination administered by the board, which requires demonstration of an applicant's skill in dentistry, prosthetic dentistry, diagnosis and treatment of periodontics, and judgment in diagnosis-treatment planning.

This bill would require that each applicant give a clinical demonstration of the required skills, and give a written demonstration of his or her judgment in dental diagnosis and treatment planning, prosthetic dentistry, and endodontics.

(3) Existing law permits the Board of Dental Examiners to require each applicant for examination to successfully complete the National Board of Dental Examiners' written examination.

This bill would require that each applicant for examination successfully complete the National Board of Dental Examiners' written examination and provides that successful passage of this examination may satisfy the board's requirement for a written demonstration of judgment in dental diagnosis and treatment planning.

(4) Existing law requires any dentist who employs licensed dental auxiliaries, as specified, to satisfy requirements of continuing education in management and utilization of auxiliaries.

This bill would delete that requirement.

(5) Existing law regulating physician licensure permits an applicant for a physician's and surgeon's certificate who is found by the Division of Licensing of the Medical Board of California to be deficient in required education and clinical instruction to engage in the practice of medicine in this state in any setting approved by the division for the period of time prescribed by the division.

This bill would include in those provisions applicants for a physician's and surgeon's certificate who are required to

complete additional medical instruction due to the failure to pass the oral or any part of the written examination after 2 attempts.

(6) Existing law provides that a licensee of the Medical Board of California or a health care facility that fails or refuses to comply with a request for medical records when the request is accompanied by the patient's written authorization is liable for a civil penalty.

This bill would provide that the failure or refusal to comply with a court order issued in the enforcement of a subpoena, mandating the release of medical records, is also a misdemeanor, punishable as specified, and, with respect to a licensee, constitutes unprofessional conduct punishable by license suspension or revocation. This bill would thereby impose a state-mandated local program by creating a new crime. It would enact other related provisions.

(7) Existing law provides for a diversion program for physicians and surgeons with impairment due to abuse of drugs or alcohol or mental or physical illness. Existing law provides that records of a physician and surgeon who has completed the program shall be purged and provides that all records pertaining to the treatment of a physician and surgeon in a program shall be confidential, as specified.

This bill would require each physician and surgeon to sign an agreement that diversion records may be used in disciplinary or criminal proceedings in certain circumstances, would permit the retention of records if specified by regulation, and would make related changes.

(8) Existing law requires the California State Board of Pharmacy to take action against any holder of a license to practice pharmacy who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

This bill would provide that unprofessional conduct includes the cash compromise of certain controlled substances violations, as specified. It would specify that the record of compromise is conclusive evidence of unprofessional conduct.

This bill would provide that if a pharmacist possesses a license or is otherwise authorized to practice in another state or by an agency of the federal government, and the license is

suspended or revoked, as specified, the pharmacist's license in this state shall automatically be suspended for the duration of the suspension or revocation, as specified.

(9) Existing law provides that any person who attempts to secure or secures licensure as a pharmacist by making or causing to be made false representations, or who fraudulently represents himself or herself to be registered, is guilty of a misdemeanor, and upon conviction is punishable by a fine not exceeding \$400, or by imprisonment not exceeding 50 days, or by both the fine and imprisonment.

This bill would increase the maximum amount of the fine to \$5,000.

(10) Existing law requires that any person who has received from the State Board of Accountancy a certificate of certified public accountant or a certificate of public accountant and holds a valid permit to practice be styled and known as a "certified public accountant" or "public accountant," respectively. Existing law prohibits any other person, except a partnership of registered certified public accountants or a partnership of public accountants to assume or use that title, designation, or abbreviation or any other title, designation, sign, card, or device tending to indicate that the person using it is a certified public accountant or public accountant, respectively.

This bill would except a registered accountancy corporation from the above prohibition. The bill would also prohibit a person or firm from using any title or designation in connection with the designation "certified public accountant" or "public accountant" that is false or misleading or that is likely to lead to public confusion concerning either the source of the title or designation or the training, education, or experience required to earn, obtain, or use the title or designation. The bill would also make various revisions regarding the use of names in an accountancy firm or accountancy corporation and the registration requirements for accountancy partnerships.

Violation of certain provisions relating to accountancy constitute a crime. Because a violation of the above provisions pertaining to the use of the designation "certified public

accountant” or “public accountant” would create a new crime, this bill would impose a state-mandated local program.

(11) Existing law provides that an expired permit to practice public accountancy may be renewed at any time within 5 years after its expiration on filing of an application for renewal on a form prescribed by the State Board of Accountancy, payment of all accrued and unpaid renewal fees, and giving evidence to the board of compliance with the continuing education provisions. Existing law further provides that if the permit is renewed more than 30 days after its expiration, its holder, as a condition precedent to renewal, shall also pay a prescribed delinquency fee.

This bill would delete the 30-day grace period for the renewal of a permit.

(12) Existing law requires the funeral directors and embalmers program to adopt regulations requiring continuing education for funeral directors and embalmers.

This bill would require funeral directors and embalmers to certify completion on or before December 31, 2000, and December 31 of each even-numbered year thereafter as a condition of license renewal.

(13) Existing law regulating surveyors permits the State Board of Registration for Professional Engineers and Land Surveyors to prescribe certain examination requirements by regulation, as specified, and requires that candidates for the 2nd division of the examination for licensure as a land surveyor have graduated from a 4-year postsecondary curriculum, as specified, and completed at least 2 years of actual experience in land surveying, including one year of responsible field training and one year of responsible office training, or completed actual experience in land surveying for at least 6 years, including one year of responsible field training and one year of responsible office training, or registered as a civil engineer with 2 years of actual experience in land surveying.

This bill would require that for all 3 methods of complying with these requirements, the actual experience required be broad based and progressive, and would specify that all experience and training be satisfactory to the board.

Existing law allows the board at its discretion to give candidates up to 2 years of credit for experience in land surveying if they have successfully passed the first division of the examination.

This bill would delete that provision.

(14) Existing law provides for the submission of surveying records known as corner records, and requires every corner record submitted to the county surveyor or engineer to be examined or endorsed. Existing law provides that if the matters appearing on the corner record cannot be agreed upon by the licensed land surveyor or the registered civil engineer and the county surveyor, an explanation of the differences shall be noted on the corner record and it shall be submitted to and filed by the county surveyor.

This bill would provide that when the county surveyor places an explanatory note on a corner record, the county surveyor shall transmit a copy of the filed corner record within 10 working days of the filing to the licensed land surveyor or registered civil engineer who submitted the corner record. By imposing new requirements on the county surveyor, the bill would impose a state-mandated local program.

(15) Existing law establishes a Medical Quality Hearing Panel within the Office of Administrative Hearings. Under existing law, those provisions will be repealed on January 1, 1999.

This bill would delay the repeal until January 1, 2003.

(16) Existing law regulating the adjudication of disputes brought against licentiates of the Medical Board of California permits an administrative judge to issue an interim order suspending a license, or imposing other license restrictions, if the affidavits in support of the petition show that the licensee engaged in, or is about to engage in, certain acts or omissions.

This bill would additionally permit an administrative judge to issue an interim order suspending a license, or imposing other license restrictions, if the affidavits in support of the petition show that a licensee is unable to practice safely due to a mental or physical condition.

(17) Existing law also provides that if a licensee requests a hearing on an accusation relating to licentiate discipline, the board is required to provide a licensee with a hearing within



30 days and to reach a decision within 15 days of the date that matter is submitted to an administrative law judge.

This bill would require that the board reach a decision within 15 days of the date that the decision is received from the administrative law judge.

This bill would make additional conforming changes.

(18) Existing law provides that no person shall fill a prescription for a controlled substance classified in Schedule II which is tendered to him or her after the 7th day following the date of issue.

This bill would instead provide that those prescriptions shall not be filled 14 or more days after the date written on the prescription by the prescriber.

(19) Existing law provides that in the event of an epidemic, accident, or calamity, any controlled substance classified in Schedule II may be dispensed upon an oral or electronically transmitted prescription if failure to issue a prescription might result in loss of life or intense suffering, as specified.

This bill would provide that notwithstanding the general prohibition of another provision, in an emergency where failure to issue a prescription may result in loss of life or intense suffering, an order for a Schedule II controlled substance may be dispensed on an oral, written, or electronic data transmission order, subject to specified conditions.

(20) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 120 of the Business and
2 Professions Code is amended to read:

3 120. (a) The provisions of subdivision (a) of Section
4 119 shall not apply to a surviving spouse having in his or
5 her possession or displaying a deceased spouse's canceled
6 certified public accountant certificate or canceled public
7 accountant certificate which has been canceled by official
8 action of the State Board of Accountancy.

9 (b) Notwithstanding Section 119, any person who has
10 received a certificate of certified public accountant or a
11 certificate of public accountant from the board may
12 possess and may display the certificate received unless
13 the person's certificate, permit, or registration has been
14 suspended or revoked.

15 SEC. 1.5. Section 125.7 of the Business and Professions
16 Code is amended to read:

17 125.7. In addition to the remedy provided for in
18 Section 125.5, the superior court for the county in which
19 any licensee licensed under Division 2 (commencing
20 with Section 500), or any initiative act referred to in that
21 division, has engaged or is about to engage in any act that
22 constitutes a violation of a chapter of this code
23 administered or enforced by a board referred to in
24 Division 2 (commencing with Section 500), may, upon a
25 petition filed by the board and accompanied by an
26 affidavit or affidavits in support thereof and a
27 memorandum of points and authorities, issue a
28 temporary restraining order or other appropriate order
29 restraining the licensee from engaging in the business or
30 profession for which the person is licensed or from any
31 part thereof, in accordance with this section.

32 (a) If the affidavits in support of the petition show that
33 the licensee has engaged or is about to engage in acts or
34 omissions constituting a violation of a chapter of this code
35 and if the court is satisfied that permitting the licensee to



1 continue to engage in the business or profession for which
2 the license was issued will endanger the public health,
3 safety, or welfare, the court may issue an order
4 temporarily restraining the licensee from engaging in the
5 profession for which he or she is licensed.

6 (b) The order may not be issued without notice to the
7 licensee unless it appears from facts shown by the
8 affidavits that serious injury would result to the public
9 before the matter can be heard on notice.

10 (c) Except as otherwise specifically provided by this
11 section, proceedings under this section shall be governed
12 by Chapter 3 (commencing with Section 525) of Title 7
13 of Part 2 of the Code of Civil Procedure.

14 (d) When a restraining order is issued pursuant to this
15 section, or within a time to be allowed by the superior
16 court, but in any case not more than 30 days after the
17 restraining order is issued, an accusation shall be filed
18 with the board pursuant to Section 11503 of the
19 Government Code or, in the case of a licensee of the State
20 Department of Health Services, with that department
21 pursuant to Section 100171 of the Health and Safety Code.
22 The accusation shall be served upon the licensee as
23 provided by Section 11505 of the Government Code. The
24 licensee shall have all of the rights and privileges available
25 as specified in Chapter 5 (commencing with Section
26 11500) of Part 1 of Division 3 of Title 2 of the Government
27 Code. However, if the licensee requests a hearing on the
28 accusation, the board shall provide the licensee with a
29 hearing within 30 days of the request and a decision
30 within 15 days of the date the decision is received from
31 the administrative law judge, or the court may nullify the
32 restraining order previously issued. Any restraining order
33 issued pursuant to this section shall be dissolved by
34 operation of law at the time the board's decision is subject
35 to judicial review pursuant to Section 1094.5 of the Code
36 of Civil Procedure.

37 (e) The remedy provided for in this section shall be in
38 addition to, and not a limitation upon, the authority
39 provided by any other provision of this code.

SEC. 2. Section 1621.1 of the Business and Professions Code is amended to read:

1621.1. (a) The examining committee shall consist of members appointed by the board.

(b) Each member of the examining committee shall meet either of the following requirements:

(1) Possess a valid license to practice dentistry in this state, and have engaged in the practice of dentistry in this state for at least five years preceding his or her appointment.

(2) Possess a valid license to practice dental hygiene in this state, and have engaged in the practice of dental hygiene for at least five years preceding his or her appointment.

(c) A member of the examining committee shall not be an officer or faculty member of any college, school, or institution engaged in dental instruction.

SEC. 3. Section 1621.2 of the Business and Professions Code is repealed.

SEC. 4. Section 1632 of the Business and Professions Code is amended to read:

1632. Each applicant shall give clinical demonstrations of his or her skill in operative dentistry, prosthetic dentistry, and diagnosis and treatment in periodontics. The applicant shall also give written demonstrations of his or her judgment in diagnosis-treatment planning, prosthetic dentistry, and endodontics. The examination may include an examination in California law and ethics.

SEC. 5. Section 1633.5 of the Business and Professions Code is amended to read:

1633.5. Notwithstanding any other provision of this chapter, the board shall require each applicant to successfully complete the National Board of Dental Examiners' written examination. Successful passage of the National Board of Dental Examiners' written examination shall satisfy the Section 1632 requirement for a written demonstration of judgment in dental diagnosis and treatment planning.

SEC. 6. Section 1763 of the Business and Professions Code is amended to read:

1763. A licensed dentist may utilize in his or her practice no more than two dental auxiliaries in extended functions licensed pursuant to Sections 1756 and 1761.

SEC. 7. Section 2067 of the Business and Professions Code is amended to read:

2067. An applicant for a physician's and surgeon's certificate who is found by the Division of Licensing to be deficient in the education and clinical instruction required by Sections 2089 and 2089.5 or who is required pursuant to Section 2185 to complete additional medical instruction may engage in the practice of medicine in this state in any setting approved by the Division of Licensing for the period of time prescribed by the Division of Licensing.

SEC. 8. Section 2103 of the Business and Professions Code is amended to read:

2103. An applicant who is a citizen of the United States shall be eligible for a physician's and surgeon's certificate if he or she has completed the following requirements:

(a) Official transcripts or other official evidence satisfactory to the Division of Licensing of compliance with Section 2088.

(b) Official evidence satisfactory to the division of completion of a resident course or professional instruction equivalent to that required in Section 2089 in a medical school located outside the United States or Canada. However, nothing in this section shall be construed to require the division to evaluate for equivalency any coursework obtained at a medical school disapproved by the division pursuant to Article 4 (commencing with Section 2080).

(c) Official evidence satisfactory to the division of completion of all formal requirements of the medical school for graduation, except the applicant shall not be required to have completed an internship or social service or be admitted or licensed to practice medicine

1 in the country in which the professional instruction was
2 completed.

3 (d) Attained a score satisfactory to an approved
4 medical school on a qualifying examination acceptable to
5 the division.

6 (e) Successful completion of one academic year of
7 supervised clinical training in a program approved by the
8 division pursuant to Section 2104. The division shall also
9 recognize as compliance with this subdivision the
10 successful completion of a one-year supervised clinical
11 medical internship operated by a medical school
12 pursuant to Chapter 85 of the Statutes of 1972 and as
13 amended by Chapter 888 of the Statutes of 1973 as the
14 equivalent of the year of supervised clinical training
15 required by this section.

16 (1) Training received in the academic year of
17 supervised clinical training approved pursuant to Section
18 2104 shall be considered as part of the total academic
19 curriculum for purposes of meeting the requirements of
20 Sections 2089 and 2089.5.

21 (2) An applicant who has passed the basic science and
22 English language examinations required for certification
23 by the Educational Commission for Foreign Medical
24 Graduates may present evidence of those passing scores
25 along with a certificate of completion of one academic
26 year of supervised clinical training in a program
27 approved by the division pursuant to Section 2104 in
28 satisfaction of the formal certification requirements of
29 subdivision (c) of Section 2101 or subdivision (b) of
30 Section 2102.

31 (f) Satisfactory completion of the postgraduate
32 training required under Section 2096.

33 (g) Passed the written examination required for
34 certification as a physician and surgeon in this chapter.

35 SEC. 9. Section 2225.5 of the Business and Professions
36 Code is amended to read:

37 2225.5. (a) (1) A licensee who fails or refuses to
38 comply with a request for the medical records of a
39 patient, that is accompanied by that patient's written
40 authorization for release of records to the board, within

1 15 days of receiving the request and authorization, shall
2 pay to the board a civil penalty of one thousand dollars
3 (\$1,000) per day for each day that the documents have
4 not been produced after the 15th day, unless the licensee
5 is unable to provide the documents within this time
6 period for good cause.

7 (2) A health care facility shall comply with a request
8 for the medical records of a patient that is accompanied
9 by that patient's written authorization for release of
10 records to the board together with a notice citing this
11 section and describing the penalties for failure to comply
12 with this section. Failure to provide the authorizing
13 patient's medical records to the board within 30 days of
14 receiving the request, authorization, and notice shall
15 subject the health care facility to a civil penalty, payable
16 to the board, of up to one thousand dollars (\$1,000) per
17 day for each day that the documents have not been
18 produced after the 30th day, up to ten thousand dollars
19 (\$10,000), unless the health care facility is unable to
20 provide the documents within this time period for good
21 cause. This paragraph shall not require health care
22 facilities to assist the board in obtaining the patient's
23 authorization. The board shall pay the reasonable costs of
24 copying the medical records.

25 (b) (1) A licensee who fails or refuses to comply with
26 a court order, issued in the enforcement of a subpoena,
27 mandating the release of records to the board shall pay to
28 the board a civil penalty of one thousand dollars (\$1,000)
29 per day for each day that the documents have not been
30 produced after the date by which the court order requires
31 the documents to be produced, unless it is determined
32 that the order is unlawful or invalid. Any statute of
33 limitations applicable to the filing of an accusation by the
34 board shall be tolled during the period the licensee is out
35 of compliance with the court order and during any
36 related appeals.

37 (2) Any licensee who fails or refuses to comply with a
38 court order, issued in the enforcement of a subpoena,
39 mandating the release of records to the board is guilty of
40 a misdemeanor punishable by a fine *payable to the board*

1 not to exceed five thousand dollars (\$5,000). The fine shall
2 be added to the licensee's renewal fee if it is not paid by
3 the next succeeding renewal date. Any statute of
4 limitations applicable to the filing of an accusation by the
5 board shall be tolled during the period the licensee is out
6 of compliance with the court order and during any
7 related appeals.

8 (3) A health care facility that fails or refuses to comply
9 with a court order, issued in the enforcement of a
10 subpoena, mandating the release of patient records to the
11 board, that is accompanied by a notice citing this section
12 and describing the penalties for failure to comply with
13 this section, shall pay to the board a civil penalty of up to
14 one thousand dollars (\$1,000) per day for each day that
15 the documents have not been produced, up to ten
16 thousand dollars (\$10,000), after the date by which the
17 court order requires the documents to be produced,
18 unless it is determined that the order is unlawful or
19 invalid. Any statute of limitations applicable to the filing
20 of an accusation by the board against a licensee shall be
21 tolled during the period the health care facility is out of
22 compliance with the court order and during any related
23 appeals.

24 (4) Any health care facility that fails or refuses to
25 comply with a court order, issued in the enforcement of
26 a subpoena, mandating the release of records to the board
27 is guilty of a misdemeanor punishable by a fine *payable*
28 *to the board* not to exceed five thousand dollars (\$5,000).
29 Any statute of limitations applicable to the filing of an
30 accusation by the board against a licensee shall be tolled
31 during the period the health care facility is out of
32 compliance with the court order and during any related
33 appeals.

34 (c) Multiple acts by a licensee in violation of
35 subdivision (b) shall be punishable by a fine not to exceed
36 five thousand dollars (\$5,000) or by imprisonment in a
37 county jail not exceeding six months, or by both that fine
38 and imprisonment. Multiple acts by a health care facility
39 in violation of subdivision (b) shall be punishable by a fine
40 not to exceed five thousand dollars (\$5,000) and shall be

1 reported to the State Department of Health Services and
2 shall be considered as grounds for disciplinary action with
3 respect to licensure, including suspension or revocation
4 of the license or certificate.

5 ~~(d) A violation of subdivision (b) by a licensee~~

6 *(d) A failure or refusal of a licensee to comply with a*
7 *court order, issued in the enforcement of a subpoena,*
8 *mandating the release of records to the board* constitutes
9 unprofessional conduct and is grounds for suspension or
10 revocation of his or her license.

11 (e) Imposition of the civil penalties authorized by this
12 section shall be in accordance with the Administrative
13 Procedure Act (Chapter 5 (commencing with Section
14 11500) of Division 3 of Title 2 of the Government Code).

15 (f) For purposes of this section, a “health care facility”
16 means a clinic or health facility licensed or exempt from
17 licensure pursuant to Division 2 (commencing with
18 Section 1200) of the Health and Safety Code.

19 SEC. 10. Section 2239 of the Business and Professions
20 Code is amended to read:

21 2239. (a) The use or prescribing for or administering
22 to himself or herself, of any controlled substance; or the
23 use of any of the dangerous drugs specified in Section
24 4022, or of alcoholic beverages, to the extent, or in such
25 a manner as to be dangerous or injurious to the licensee,
26 or to any other person or to the public, or to the extent
27 that such use impairs the ability of the licensee to practice
28 medicine safely or more than one misdemeanor or any
29 felony involving the use, consumption, or
30 self-administration of any of the substances referred to in
31 this section, or any combination thereof, constitutes
32 unprofessional conduct. The record of the conviction is
33 conclusive evidence of such unprofessional conduct.

34 (b) A plea or verdict of guilty or a conviction following
35 a plea of nolo contendere is deemed to be a conviction
36 within the meaning of this section. The Division of
37 Medical Quality may order discipline of the licensee in
38 accordance with Section 2227 or the Division of Licensing
39 may order the denial of the license when the time for
40 appeal has elapsed or the judgment of conviction has

1 been affirmed on appeal or when an order granting
2 probation is made suspending imposition of sentence,
3 irrespective of a subsequent order under the provisions
4 of Section 1203.4 of the Penal Code allowing such person
5 to withdraw his or her plea of guilty and to enter a plea
6 of not guilty, or setting aside the verdict of guilty, or
7 dismissing the accusation, complaint, information, or
8 indictment.

9 SEC. 11. Section 2242 of the Business and Professions
10 Code is amended to read:

11 2242. (a) Prescribing, dispensing, or furnishing
12 dangerous drugs as defined in Section 4022 without a good
13 faith prior examination and medical indication therefor,
14 constitutes unprofessional conduct.

15 (b) No licensee shall be found to have committed
16 unprofessional conduct within the meaning of this section
17 if, at the time the drugs were prescribed, dispensed, or
18 furnished, any of the following applies:

19 (1) The licensee was a designated physician and
20 surgeon or podiatrist serving in the absence of the
21 patient's physician and surgeon or podiatrist, as the case
22 may be, provided such drugs were prescribed, dispensed,
23 or furnished only as necessary to maintain the patient
24 until the return of his or her practitioner, but in any case
25 no longer than 72 hours.

26 (2) The licensee transmitted the order for such drugs
27 to a registered nurse or to a licensed vocational nurse in
28 an inpatient facility (A) if such practitioner had consulted
29 with such registered nurse or licensed vocational nurse
30 who had reviewed the patient's records and (B) if such
31 practitioner was designated as the practitioner to serve in
32 the absence of the patient's physician and surgeon or
33 podiatrist, as the case may be.

34 (3) The licensee was a designated practitioner serving
35 in the absence of the patient's physician and surgeon or
36 podiatrist, as the case may be, and was in possession of or
37 had utilized the patient's records and ordered the
38 renewal of a medically indicated prescription for an
39 amount not exceeding the original prescription in
40 strength or amount or for more than one refilling.

1 SEC. 12. Section 2350 of the Business and Professions
2 Code is amended to read:

3 2350. (a) The division shall establish criteria for the
4 acceptance, denial, or termination of physicians and
5 surgeons in a diversion program. Only those physicians
6 and surgeons who have voluntarily requested diversion
7 treatment and supervision by a committee shall
8 participate in a program.

9 (b) A physician and surgeon under current
10 investigation by the division may request entry into the
11 diversion program by contacting the Chief or Deputy
12 Chief of Enforcement of the Medical Board of California.
13 The Chief or Deputy Chief of Enforcement of the
14 Medical Board of California shall refer the physician and
15 surgeon who requests participation in the diversion
16 program to a committee for evaluation of eligibility, even
17 if the physician and surgeon is currently under
18 investigation by the division, as long as the investigation
19 is based primarily on the self-administration of drugs or
20 alcohol under Section 2239, or the illegal possession,
21 prescription, or nonviolent procurement of drugs for
22 self-administration, and does not involve actual harm to
23 the public or his or her patients. Prior to referring a
24 physician and surgeon to the diversion program, the
25 division may require any physician and surgeon who
26 requests participation under those circumstances, or
27 where there are other violations, to execute a statement
28 of understanding wherein the physician and surgeon
29 agrees that violations of this chapter, or other statutes that
30 would otherwise be the basis for discipline, may
31 nevertheless be prosecuted should the physician and
32 surgeon be terminated from the program for failure to
33 comply with program requirements.

34 (c) Neither acceptance into nor participation in the
35 diversion program shall preclude the division from
36 investigating or continuing to investigate any physician
37 and surgeon for any unprofessional conduct committed
38 before, during, or after participation in the diversion
39 program.

1 (d) Neither acceptance into nor participation in the
2 diversion program shall preclude the division from taking
3 disciplinary action or continuing to take disciplinary
4 action against any physician and surgeon for any
5 unprofessional conduct committed before, during, or
6 after participation in the diversion program, except for
7 that conduct which resulted in the physician and
8 surgeon's referral to the diversion program.

9 (e) Any physician and surgeon terminated from the
10 diversion program for failure to comply with program
11 requirements is subject to disciplinary action by the
12 division for acts committed before, during, and after
13 participation in the diversion program. The division shall
14 not be precluded from taking disciplinary action for
15 violations identified in the statement of understanding
16 described in subdivision (b) if a physician and surgeon is
17 terminated from the diversion program for failure to
18 comply with program requirements. The termination of
19 a physician and surgeon who has been referred to the
20 diversion program pursuant to subdivision (b) shall be
21 reported by the committee to the division.

22 (f) Nothing in this section shall preclude a physician
23 and surgeon who is not the subject of a current
24 investigation from self-referring to the diversion program
25 on a confidential basis. Subdivision (b) shall not apply to
26 a physician and surgeon who applies for the diversion
27 program in accordance with this subdivision.

28 (g) Any physician and surgeon who successfully
29 completes the diversion program shall not be subject to
30 any disciplinary actions by the board for any alleged
31 violation that resulted in referral to the diversion
32 program. Successful completion shall be determined by
33 the committee but shall include, at a minimum, two years
34 during which the physician and surgeon has remained
35 free from the use of drugs or alcohol and adopted a
36 lifestyle to maintain a state of sobriety.

37 (h) The division shall establish criteria for the
38 selection of administrative physicians and surgeons who
39 shall examine physicians and surgeons requesting
40 diversion under a program. Any reports made under this

1 article by the administrative physician and surgeon shall
2 constitute an exception to Section 2263 and to Sections
3 994 and 995 of the Evidence Code.

4 (i) The division shall require biannual reports from
5 each committee which shall include, but not be limited
6 to, information concerning the number of cases accepted,
7 denied, or terminated with compliance or
8 noncompliance, and a cost analysis of the program. The
9 Bureau of Medical Statistics may assist the committees in
10 the preparation of the reports.

11 (j) Each physician and surgeon shall sign an
12 agreement that diversion records may be used in
13 disciplinary or criminal proceedings if the physician and
14 surgeon is terminated from the diversion program and
15 one of the following conditions exists:

16 (1) His or her participation in the diversion program
17 is a condition of probation.

18 (2) He or she has disciplinary action pending or was
19 under investigation at the time of entering the diversion
20 program.

21 (3) A diversion evaluation committee determines that
22 he or she presents a threat to the public health or safety.

23 This agreement shall also authorize the diversion
24 program to exchange information about the physician
25 and surgeon's recovery with a hospital well-being
26 committee or monitor and with the board's licensing
27 program, where appropriate, and to acknowledge, with
28 the physician and surgeon's approval, that he or she is
29 participating in the diversion program. Nothing in this
30 section shall be construed to allow release of alcohol or
31 drug treatment records in violation of federal or state law.

32 SEC. 13. Section 2355 of the Business and Professions
33 Code is amended to read:

34 2355. (a) After a committee in its discretion has
35 determined that a physician and surgeon has been
36 rehabilitated and the diversion program is completed,
37 the committee shall purge and destroy all treatment
38 records pertaining to the physician's and surgeon's
39 participation in a diversion program, except as otherwise
40 provided in this section. Notwithstanding Section 156.1,

1 the board shall retain any other information and records
2 that it specifies by regulation.

3 (b) Except as otherwise provided by Section 2350, all
4 board and committee records and records of proceedings
5 pertaining to the treatment of a physician and surgeon in
6 a program shall be kept confidential and are not subject
7 to discovery or subpoena.

8 SEC. 14. Section 3512 of the Business and Professions
9 Code is amended to read:

10 3512. Except as provided in Sections 159.5 and 2020,
11 the committee shall employ within the limits of the
12 Physician Assistant Fund all personnel necessary to carry
13 out the provisions of this chapter including an executive
14 officer who shall be exempt from civil service. The board
15 and committee shall make all necessary expenditures to
16 carry out the provisions of this chapter from the funds
17 established by Section 3520. The committee may accept
18 contributions to effect the purposes of this chapter.

19 SEC. 15. Section 3516.5 of the Business and
20 Professions Code is amended to read:

21 3516.5. (a) Notwithstanding any other provision of
22 law and in accordance with regulations established by the
23 board, the director of emergency care services in a
24 hospital with an approved program for the training of
25 emergency care physician assistants, may apply to the
26 board for authorization under which such director may
27 grant approval for emergency care physicians on the staff
28 of such hospital to supervise emergency care physician
29 assistants.

30 (b) The application shall encompass all supervising
31 physicians employed in such service.

32 (c) Nothing in this section shall be construed to
33 authorize any one emergency care physician while on
34 duty to supervise more than two physician assistants at
35 any one time.

36 (d) A violation of this section by the director of
37 emergency care services in a hospital with an approved
38 program for the training of emergency care physician
39 assistants constitutes unprofessional conduct within the

1 meaning of Chapter 5 (commencing with Section 2000)
2 of Division 2.

3 (e) Any violation of this section shall be grounds for
4 suspension of the approval of the director or disciplinary
5 action against the director or suspension of the approved
6 program under Section 3527.

7 SEC. 16. Section 3517 of the Business and Professions
8 Code is amended to read:

9 3517. The committee shall require a written
10 examination of physician assistants in the manner and
11 under the rules and regulations as it shall prescribe, but
12 the examination shall be conducted in that manner as to
13 ensure that the identity of each applicant taking the
14 examination will be unknown to all of the examiners until
15 all examination papers have been graded. Except as
16 otherwise provided in this chapter, or by regulation, no
17 physician assistant applicant shall receive approval under
18 this chapter without first successfully passing an
19 examination given under the direction of the committee.

20 Examinations for licensure as a physician assistant may
21 be required by the committee under a uniform
22 examination system, and for that purpose the committee
23 may make those arrangements with organizations
24 furnishing examination material as may, in its discretion,
25 be desirable. The committee shall, however, establish a
26 passing score for each examination. The licensure
27 examination for physician assistants shall be held by the
28 committee at least once a year with such additional
29 examinations as the committee deems necessary. The
30 time and place of examination shall be fixed by the
31 committee.

32 The committee may grant interim approval to an
33 applicant for licensure as a physician assistant.

34 Every applicant who has complied with Section 3519,
35 subdivision (a), who has filed an application with the
36 committee may, between the date of receipt of notice
37 that the application is on file and the date of receipt of his
38 or her license, practice as a physician assistant on interim
39 approval under the supervision of an approved physician.
40 Applicants shall notify the committee in writing of any

1 and all supervising physicians under whom they will be
2 performing services prior to practicing under interim
3 approval. If the applicant shall fail to take the next
4 succeeding licensure examination or fails to pass the
5 examination or fails to receive a license, all privileges
6 under this section shall automatically cease upon written
7 notification sent to the applicant by the committee.

8 In the event the licensure examination required by the
9 committee is under a uniform examination system, the
10 applicant shall provide evidence satisfactory to the
11 committee (a) that an application has been filed and
12 accepted for the examination and (b) that the
13 organization administering the examination has been
14 requested to transmit the applicant's scores to the
15 committee in order for the applicant to maintain interim
16 approval. The applicant shall be deemed to have failed
17 the examination unless the applicant provides evidence
18 to the committee within 30 days after scores have been
19 released that he or she has passed the examination.

20 SEC. 17. Section 3519 of the Business and Professions
21 Code is amended to read:

22 3519. The committee shall issue under the name of
23 the Medical Board of California a license to all physician
24 assistant applicants who meet all of the following
25 requirements:

26 (a) Provide evidence of one of the following:

27 (1) Successful completion of an approved program.

28 (2) Successful completion in a medical school
29 approved by the Division of Licensing of a resident
30 course of professional instruction which meets the
31 requirements of Sections 2088 and 2089.

32 (b) Pass any examination required under Section 3517.

33 (c) Not be subject to denial of licensure under Division
34 1.5 (commencing with Section 475) or Section 3527.

35 (d) Pay all fees required under Section 3521.1.

36 SEC. 18. Section 3520 of the Business and Professions
37 Code is amended to read:

38 3520. Within 10 days after the beginning of each
39 calendar month the board shall report to the Controller
40 the amount and source of all collections made under this

1 chapter and at the same time pay all those sums into the
2 State Treasury, where they shall be credited to the
3 Physician Assistant Fund, which fund is hereby created.
4 All money in the fund is continuously appropriated to
5 carry out the purpose of this chapter.

6 SEC. 19. Section 3521.2 of the Business and
7 Professions Code is amended to read:

8 3521.2. The fees to be paid by physician assistant
9 training programs are to be set by the committee as
10 follows:

11 (a) An application fee not to exceed five hundred
12 dollars (\$500) shall be charged to each applicant seeking
13 program approval by the committee.

14 (b) An approval fee not to exceed one hundred dollars
15 (\$100) shall be charged to each program upon its
16 approval by the committee.

17 SEC. 20. Section 3523 of the Business and Professions
18 Code is amended to read:

19 3523. All physician assistant licenses shall expire at 12
20 midnight of the last day of the birth month of the licensee
21 during the second year of a two-year term if not renewed.

22 The committee shall establish by regulation procedures
23 for the administration of a birthdate renewal program,
24 including, but not limited to, the establishment of a
25 system of staggered license expiration dates and a pro rata
26 formula for the payment of renewal fees by physician
27 assistants affected by the implementation of the program.

28 To renew an unexpired license, the licensee shall, on or
29 before the date of expiration of the license, apply for
30 renewal on a form provided by the committee,
31 accompanied by the prescribed renewal fee.

32 SEC. 21. Section 3524 of the Business and Professions
33 Code is amended to read:

34 3524. A license or approval which has expired may be
35 renewed at any time within five years after its expiration
36 by filing an application for renewal on a form prescribed
37 by the committee or board, as the case may be, and
38 payment of the renewal fee in effect on the preceding
39 regular renewal date. If the license or approval is not
40 renewed within 30 days after its expiration, the licensed

1 physician assistant and approved supervising physician,
2 as a condition precedent to renewal, shall also pay the
3 prescribed delinquency fee, if any. Renewal under this
4 section shall be effective on the date on which the
5 application is filed, on the date on which the renewal fee
6 is paid, or on the date on which the delinquency fee, if
7 any, is paid, whichever occurs last. If so renewed, the
8 license shall continue in effect through the expiration
9 date provided in Section 3522 or 3523 which next occurs
10 after the effective date of the renewal, when it shall
11 expire, if it is not again renewed.

12 SEC. 22. Section 3526 of the Business and Professions
13 Code is amended to read:

14 3526. A person who fails to renew his or her license or
15 approval within five years after its expiration may not
16 renew it, and it may not be reissued, reinstated, or
17 restored thereafter, but that person may apply for and
18 obtain a new license or approval if he or she:

19 (a) Has not committed any acts or crimes constituting
20 grounds for denial of licensure under Division 1.5
21 (commencing with Section 475).

22 (b) Takes and passes the examination, if any, which
23 would be required of him or her if application for
24 licensure was being made for the first time, or otherwise
25 establishes to the satisfaction of the committee that, with
26 due regard for the public interest, he or she is qualified
27 to practice as a physician assistant.

28 (c) Pays all of the fees that would be required as if
29 application for licensure was being made for the first
30 time.

31 SEC. 23. Section 3527 of the Business and Professions
32 Code is amended to read:

33 3527. (a) The committee may order the denial of an
34 application for, or the issuance subject to terms and
35 conditions of, or the suspension or revocation of, or the
36 imposition of probationary conditions upon a physician
37 assistant license after a hearing as required in Section 3528
38 for unprofessional conduct which includes, but is not
39 limited to, a violation of this chapter, a violation of the



1 Medical Practice Act, or a violation of the regulations
2 adopted by the committee or the board.

3 (b) The committee may order the denial of an
4 application for, or the suspension or revocation of, or the
5 imposition of probationary conditions upon, an approved
6 program after a hearing as required in Section 3528 for a
7 violation of this chapter or the regulations adopted
8 pursuant thereto.

9 (c) The board may order the denial of an application
10 for, or the issuance subject to terms and conditions of, or
11 the suspension or revocation of, or the imposition of
12 probationary conditions upon, an approval to supervise a
13 physician assistant, after a hearing as required in Section
14 3528, for unprofessional conduct, which includes, but is
15 not limited to, a violation of this chapter, a violation of the
16 Medical Practice Act, or a violation of the regulations
17 adopted by the committee or the board.

18 (d) Notwithstanding subdivision (c), the Division of
19 Medical Quality of the Medical Board of California, in
20 conjunction with an action it has commenced against a
21 physician and surgeon, may, in its own discretion and
22 without the concurrence of the board, order the
23 suspension or revocation of, or the imposition of
24 probationary conditions upon, an approval to supervise a
25 physician assistant, after a hearing as required in Section
26 3528, for unprofessional conduct, which includes, but is
27 not limited to, a violation of this chapter, a violation of the
28 Medical Practice Act, or a violation of the regulations
29 adopted by the committee or the board.

30 (e) The committee may order the denial of an
31 application for, or the suspension or revocation of, or the
32 imposition of probationary conditions upon, a physician
33 assistant license, after a hearing as required in Section
34 3528 for unprofessional conduct which includes, except
35 for good cause, the knowing failure of a licensee to protect
36 patients by failing to follow infection control guidelines of
37 the committee, thereby risking transmission of
38 blood-borne infectious diseases from licensee to patient,
39 from patient to patient, and from patient to licensee. In
40 administering this subdivision, the committee shall

1 consider referencing the standards, regulations, and
2 guidelines of the State Department of Health Services
3 developed pursuant to Section 1250.11 of the Health and
4 Safety Code and the standards, regulations, and
5 guidelines pursuant to the California Occupational Safety
6 and Health Act of 1973 (Part 1 (commencing with Section
7 6300) of Division 5 of the Labor Code) for preventing the
8 transmission of HIV, hepatitis B, and other blood-borne
9 pathogens in health care settings. As necessary, the
10 committee shall consult with the California Medical
11 Board, the Board of Podiatric Medicine, the Board of
12 Dental Examiners, the Board of Registered Nursing, and
13 the Board of Vocational Nursing and Psychiatric
14 Technicians, to encourage appropriate consistency in the
15 implementation of this subdivision.

16 The committee shall seek to ensure that licensees are
17 informed of the responsibility of licensees and others to
18 follow infection control guidelines, and of the most recent
19 scientifically recognized safeguards for minimizing the
20 risk of transmission of blood-borne infectious diseases.

21 SEC. 24. Section 3528 of the Business and Professions
22 Code is amended to read:

23 3528. Any proceedings involving the denial,
24 suspension, or revocation of the application for licensure
25 or the license of a physician assistant, the application for
26 approval or the approval of a supervising physician, or the
27 application for approval or the approval of an approved
28 program under this chapter shall be conducted in
29 accordance with Chapter 5 (commencing with Section
30 11500) of Part 1 of Division 3 of Title 2 of the Government
31 Code.

32 SEC. 25. Section 3530 of the Business and Professions
33 Code is amended to read:

34 3530. One year from the date of a revocation of a
35 license or approval under this chapter, application may
36 be made to the committee or the board in the case of
37 approval of an application to supervise physician
38 assistants for reinstatement, restoration or modification of
39 probation. The committee may accept or reject an
40 application for reinstatement, restoration, or

1 modification of probation and may require an
2 examination for that reinstatement, restoration, or
3 modification of probation when it is deemed appropriate
4 for a license or approval under this chapter.

5 SEC. 26. Section 3534.1 of the Business and
6 Professions Code is amended to read:

7 3534.1. The examining committee shall establish and
8 administer a diversion program for the rehabilitation of
9 physician assistants whose competency is impaired due to
10 the abuse of drugs or alcohol. The examining committee
11 may contract with any other state agency or a private
12 organization to perform its duties under this article. The
13 examining committee may establish one or more
14 diversion evaluation committees to assist it in carrying
15 out its duties under this article. As used in this article,
16 “committee” means a diversion evaluation committee.

17 SEC. 27. Section 3534.3 of the Business and
18 Professions Code is amended to read:

19 3534.3. Each committee has the following duties and
20 responsibilities:

21 (a) The evaluation of physician assistants who request
22 participation in the program and to consider any
23 recommendations from professional consultants on the
24 admission of applicants to the diversion program.

25 (b) The review and designation of treatment facilities
26 to which physician assistants in the diversion program
27 may be referred.

28 (c) The receipt and review of information concerning
29 physician assistants participating in the program.

30 (d) To call meetings as necessary to consider the
31 requests of physician assistants to participate in the
32 diversion program, to consider reports regarding
33 participants in the program, and to consider any other
34 matters referred to it by the examining committee.

35 (e) The consideration of whether each participant in
36 the diversion program may with safety continue or
37 resume the practice of medicine.

38 (f) To set forth in writing a treatment program for
39 each participant in the diversion program with
40 requirements for supervision and surveillance.

(g) To hold a general meeting at least twice a year, which shall be open and public, to evaluate the diversion program's progress, to prepare reports to be submitted to the examining committee, and to suggest proposals for changes in the diversion program.

(h) For the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, any member of a committee shall be considered a public employee. No examining committee or committee member, contractor, or agent thereof, shall be liable for any civil damage because of acts or omissions which may occur while acting in good faith in a program established pursuant to this article.

SEC. 29. Section 4301 of the Business and Professions Code is amended to read:

4301. The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

(a) Gross immorality.

(b) Incompetence.

(c) Gross negligence.

(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153 of the Health and Safety Code.

(e) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153.5 of the Health and Safety Code. Factors to be considered in determining whether the furnishing of controlled substances is clearly excessive shall include, but not be limited to, the amount of controlled substances furnished, the previous ordering pattern of the customer (including size and frequency of orders), the type and size of the customer, and where and to whom the customer distributes its product.

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as

1 a licensee or otherwise, and whether the act is a felony or
2 misdemeanor or not.

3 (g) Knowingly making or signing any certificate or
4 other document that falsely represents the existence or
5 nonexistence of a state of facts.

6 (h) The administering to oneself, of any controlled
7 substance, or the use of any dangerous drug or of alcoholic
8 beverages to the extent or in a manner as to be dangerous
9 or injurious to oneself, to a person holding a license under
10 this chapter, or to any other person or to the public, or to
11 the extent that the use impairs the ability of the person
12 to conduct with safety to the public the practice
13 authorized by the license.

14 (i) Except as otherwise authorized by law, knowingly
15 selling, furnishing, giving away, or administering or
16 offering to sell, furnish, give away, or administer any
17 controlled substance to an addict.

18 (j) The violation of any of the statutes of this state or
19 of the United States regulating controlled substances and
20 dangerous drugs.

21 (k) The conviction of more than one misdemeanor or
22 any felony involving the use, consumption, or
23 self-administration of any dangerous drug or alcoholic
24 beverage, or any combination of those substances.

25 (l) The conviction of a crime substantially related to
26 the qualifications, functions, and duties of a licensee
27 under this chapter. The record of conviction of a violation
28 of Chapter 13 (commencing with Section 801) of Title 21
29 of the United States Code regulating controlled
30 substances or of a violation of the statutes of this state
31 regulating controlled substances or dangerous drugs shall
32 be conclusive evidence of unprofessional conduct. In all
33 other cases, the record of conviction shall be conclusive
34 evidence only of the fact that the conviction occurred.
35 The board may inquire into the circumstances
36 surrounding the commission of the crime, in order to fix
37 the degree of discipline or, in the case of a conviction not
38 involving controlled substances or dangerous drugs, to
39 determine if the conviction is of an offense substantially
40 related to the qualifications, functions, and duties of a

1 licensee under this chapter. A plea or verdict of guilty or
2 a conviction following a plea of nolo contendere is
3 deemed to be a conviction within the meaning of this
4 provision. The board may take action when the time for
5 appeal has elapsed, or the judgment of conviction has
6 been affirmed on appeal or when an order granting
7 probation is made suspending the imposition of sentence,
8 irrespective of a subsequent order under Section 1203.4
9 of the Penal Code allowing the person to withdraw his or
10 her plea of guilty and to enter a plea of not guilty, or
11 setting aside the verdict of guilty, or dismissing the
12 accusation, information, or indictment.

13 (m) The cash compromise of a charge of violation of
14 Chapter 13 (commencing with Section 801) of Title 21 of
15 the United States Code regulating controlled substances.
16 The record of the compromise is conclusive evidence of
17 unprofessional conduct.

18 (n) The revocation, suspension, or other discipline by
19 another state of a license to practice pharmacy, operate
20 a pharmacy, or do any other act for which a license is
21 required by this chapter.

22 (o) Violating or attempting to violate, directly or
23 indirectly, or assisting in or abetting the violation of or
24 conspiring to violate any provision or term of this chapter
25 or of the applicable federal and state laws and regulations
26 governing pharmacy, including regulations established
27 by the board.

28 (p) Actions or conduct that would have warranted
29 denial of a license.

30 (q) Engaging in any conduct that subverts or attempts
31 to subvert an investigation of the board.

32 SEC. 30. Section 4301.5 is added to the Business and
33 Professions Code, to read:

34 4301.5. (a) If a pharmacist possesses a license or is
35 otherwise authorized to practice pharmacy in any other
36 state or by an agency of the federal government, and that
37 license or authority is suspended or revoked, the
38 pharmacist's license shall be suspended automatically for
39 the duration of the suspension or revocation, unless
40 terminated or rescinded as provided in subdivision (c).

1 The board shall notify the pharmacist of the license
2 suspension and of his or her right to have the issue of
3 penalty heard as provided in this section.

4 (b) Upon its own motion or for good cause shown, the
5 board may decline to impose or may set aside the
6 suspension when it appears to be in the interest of justice
7 to do so, with due regard to maintaining the integrity of
8 and confidence in the pharmacy profession.

9 (c) The issue of penalty shall be heard by an
10 administrative law judge sitting alone, by a committee of
11 the board sitting with an administrative law judge, or by
12 the board sitting with an administrative law judge, at the
13 board's discretion. A pharmacist may request a hearing
14 on the penalty and that hearing shall be held within 90
15 days from the date of the request. If the order suspending
16 or revoking the pharmacist's license or authority to
17 practice pharmacy is overturned on appeal, any
18 discipline ordered pursuant to this section shall
19 automatically cease. Upon the showing to the
20 administrative law judge, board, or committee of the
21 board by the pharmacist that the out-of-state action is not
22 a basis for discipline in California, the suspension shall be
23 rescinded.

24 If an accusation for permanent discipline is not filed
25 within 90 days of the suspension imposed pursuant to this
26 section, the suspension shall automatically terminate.

27 (d) The record of the proceedings that resulted in the
28 suspension or revocation of the pharmacist's license or
29 authority to practice pharmacy, including a transcript of
30 the testimony therein, may be received in evidence.

31 (e) If a summary suspension has been issued pursuant
32 to this section, the pharmacist may request that the
33 hearing on the penalty conducted pursuant to subdivision
34 (c) be held at the same time as a hearing on the
35 accusation.

36 SEC. 31. Section 4322 of the Business and Professions
37 Code is amended to read:

38 4322. Any person who attempts to secure or secures
39 licensure for himself or herself or any other person under
40 this chapter by making or causing to be made any false

1 representations, or who fraudulently represents himself
2 or herself to be registered, is guilty of a misdemeanor, and
3 upon conviction thereof shall be punished by a fine not
4 exceeding five thousand dollars (\$5,000), or by
5 imprisonment not exceeding 50 days, or by both that fine
6 and imprisonment.

7 SEC. 32. Section 5053 of the Business and Professions
8 Code is amended to read:

9 5053. Nothing contained in this chapter precludes a
10 person who is not a certified public accountant or public
11 accountant from serving as an employee of, or an assistant
12 to, a certified public accountant or public accountant or
13 partnership or a corporation composed of certified public
14 accountants or public accountants holding a permit to
15 practice pursuant to this chapter if the employee or
16 assistant works under the control and supervision of a
17 certified public accountant, or a public accountant
18 authorized to practice public accountancy pursuant to
19 this chapter and if the employee or assistant does not issue
20 any statement over his or her name.

21 This section does not apply to an attorney at law in
22 connection with his or her practice of law.

23 SEC. 33. Section 5055 of the Business and Professions
24 Code is amended to read:

25 5055. Any person who has received from the board a
26 certificate of certified public accountant may, subject to
27 Section 5051, be styled and known as a “certified public
28 accountant” and may also use the abbreviation “C.P.A.”
29 No other person, except a firm registered under this
30 chapter, shall assume or use that title, designation, or
31 abbreviation or any other title, designation, sign, card, or
32 device tending to indicate that the person using it is a
33 certified public accountant.

34 SEC. 34. Section 5056 of the Business and Professions
35 Code is amended to read:

36 5056. Any person who has received from the board a
37 certificate of public accountant may, subject to Section
38 5051, be styled and known as a “public accountant” and
39 may also use the abbreviation “P.A.” No other person,
40 except a firm registered under this chapter, shall assume



1 or use that title, designation, or abbreviation or any other
2 title, designation, sign, card, or device tending to indicate
3 that the person using it is a public accountant.

4 SEC. 35. Section 5058.1 is added to the Business and
5 Professions Code, to read:

6 5058.1. A person or firm may not use any title or
7 designation in connection with the designation “certified
8 public accountant” or “public accountant” that is false or
9 misleading.

10 The board may adopt regulations covering the use of
11 titles or designations.

12 SEC. 36. Section 5059 of the Business and Professions
13 Code is repealed.

14 SEC. 37. Section 5060 of the Business and Professions
15 Code is amended to read:

16 5060. (a) No person or firm may practice public
17 accountancy under any name which is false or misleading.

18 (b) No person or firm may practice public
19 accountancy under any name other than the name under
20 which the person or firm holds a valid permit to practice
21 issued by the board.

22 (c) Notwithstanding subdivision (b), a sole proprietor
23 may practice under a name other than the name set forth
24 on his or her permit to practice, provided the name is
25 registered by the board, is in good standing, and complies
26 with the requirements of subdivision (a).

27 (d) The board may adopt regulations to implement,
28 interpret, and make specific the provisions of this section
29 including, but not limited to, regulations designating
30 particular forms of names as being false or misleading.

31 SEC. 38. Section 5070.1 of the Business and
32 Professions Code is repealed.

33 SEC. 39. Section 5070.6 of the Business and
34 Professions Code is amended to read:

35 5070.6. Except as otherwise provided in this chapter,
36 an expired permit may be renewed at any time within
37 five years after its expiration on filing of application for
38 renewal on a form prescribed by the board, payment of
39 all accrued and unpaid renewal fees and on and after
40 December 31, 1974, giving evidence to the board of

1 compliance with the continuing education provisions of
2 this chapter. If the permit is renewed after its expiration,
3 its holder, as a condition precedent to renewal, shall also
4 pay the delinquency fee prescribed by this chapter.
5 Renewal under this section shall be effective on the date
6 on which the application is filed, on the date on which the
7 accrued renewal fees are paid, or on the date on which
8 the delinquency fee, if any, is paid, whichever last occurs.
9 If so renewed, the permit shall continue in effect through
10 the date provided in Section 5070.5 that next occurs after
11 the effective date of the renewal, when it shall expire if
12 it is not again renewed.

13 SEC. 40. Section 5071 of the Business and Professions
14 Code is repealed.

15 SEC. 41. Section 5072 of the Business and Professions
16 Code is amended to read:

17 5072. (a) No persons shall engage in the practice of
18 accountancy as a partnership unless the partnership is
19 registered by the board.

20 (b) A partnership, other than a limited partnership,
21 may be registered by the board to engage in the practice
22 of public accountancy provided it meets the following
23 requirements:

24 (1) At least one general partner shall hold a valid
25 permit to practice as a certified public accountant, public
26 accountant, or accountancy corporation, or shall be an
27 applicant for a certificate as a certified public accountant
28 under Sections 5087 and 5088.

29 (2) Each partner personally engaged within this state
30 in the practice of public accountancy as defined by
31 Section 5051 shall hold a valid permit to practice in this
32 state or shall have applied for a certificate as a certified
33 public accountant under Sections 5087 and 5088.

34 (3) Each partner not personally engaged in the
35 practice of public accountancy within this state shall be
36 a certified public accountant in good standing of some
37 state, except as permitted by Section 5079.

38 (4) Each resident manager in charge of an office of the
39 firm in this state shall be a licensee in good standing of this



1 state, or shall have applied for a certificate as a certified
2 public accountant under Sections 5087 and 5088.

3 SEC. 42. Section 5073 of the Business and Professions
4 Code is amended to read:

5 5073. (a) Application for registration of a partnership
6 shall be made upon a form prescribed by the board. The
7 board shall in each case determine whether the applicant
8 is eligible for registration.

9 (b) A partnership that is so registered and that holds
10 a valid permit issued under this article and that has at least
11 one general partner who is licensed to practice using the
12 designation “certified public accountant” or the
13 abbreviation “C.P.A.” and one additional licensed person
14 may use the words “certified public accountants” or the
15 abbreviation “C.P.A.s” in connection with its partnership
16 name.

17 (c) A partnership that is so registered and that holds
18 a valid permit issued under this article and that has at least
19 one general partner who is licensed to practice using the
20 designation “public accountant” or the abbreviation
21 “P.A.” and one additional licensed person may use the
22 words “public accountants” or the abbreviation “P.A.s” in
23 connection with its partnership name.

24 (d) Notification shall be given to the board within one
25 month after the admission to, or withdrawal of, a partner
26 from any partnership so registered.

27 (e) Any registration of a partnership under this section
28 granted in reliance upon Sections 5087 and 5088 shall
29 terminate forthwith if the board rejects the application
30 under Sections 5087 and 5088 of the general partner who
31 signed the application for registration as a partnership, or
32 any partner personally engaged in the practice of public
33 accountancy in this state, or any resident manager of a
34 partnership in charge of an office in this state.

35 SEC. 43. Section 5074 of the Business and Professions
36 Code is repealed.

37 SEC. 44. Section 5075 of the Business and Professions
38 Code is repealed.

39 SEC. 45. Section 5076 of the Business and Professions
40 Code is repealed.

1 SEC. 46. Section 5104 of the Business and Professions
2 Code is amended to read:

3 5104. Any certified public accountant or public
4 accountant whose certificate, registration, or permit has
5 been revoked or suspended shall upon request of the
6 board relinquish his or her certificate or permit.
7 However, upon the expiration of the period of suspension,
8 the board shall immediately return any suspended
9 certificate or permit which has been relinquished.

10 SEC. 47. Section 5134 of the Business and Professions
11 Code is amended to read:

12 5134. The amount of fees prescribed by this chapter
13 is as follows:

14 (a) The fee to be charged to each applicant for the
15 certified public accountant examination shall be fixed by
16 the board at an amount to equal the actual cost to the
17 board of the purchase or development of the written
18 examination, plus the estimated cost to the board of
19 administering the written examination and shall not
20 exceed two hundred fifty dollars (\$250). The board may
21 charge a reexamination fee equal to the actual cost to the
22 board of the purchase or development of the written
23 examination or any of its component parts, plus the
24 estimated cost to the board of administering the written
25 examination and not to exceed fifty dollars (\$50) for each
26 part that is subject to reexamination.

27 (b) The fee to be charged to out-of-state candidates for
28 the certified public accountant examination shall be fixed
29 by the board at an amount equal to the estimated cost to
30 the board of administering the examination and shall not
31 exceed one hundred fifty dollars (\$150) per candidate.

32 (c) The application fee to be charged to each applicant
33 for issuance of a certified public accountant certificate
34 shall be fixed by the board at an amount equal to the
35 estimated administrative cost to the board of processing
36 and issuing the certificate and shall not exceed two
37 hundred fifty dollars (\$250).

38 (d) The application fee to be charged to each
39 applicant for issuance of a certified public accountant
40 certificate by waiver of examination shall be fixed by the

1 board at an amount equal to the estimated administrative
2 cost to the board of processing and issuing the certificate
3 and shall not exceed two hundred fifty dollars (\$250).

4 (e) The fee to be charged to each applicant for
5 registration shall be fixed by the board and shall not
6 exceed one hundred fifty dollars (\$150).

7 (f) The board shall fix the biennial renewal fee so that,
8 together with the estimated amount from revenue other
9 than that generated by subdivisions (a) to (d), inclusive,
10 the reserve balance in the board's contingent fund shall
11 be equal to approximately three months of annual
12 authorized expenditures. Any increase in the renewal fee
13 made after July 1, 1990, shall be effective upon a
14 determination by the board, by regulation adopted
15 pursuant to subdivision (k), that additional moneys are
16 required to fund authorized expenditures other than
17 those specified in subdivisions (a) to (d), inclusive, and
18 maintain the board's contingent fund reserve balance
19 equal to three months of estimated annual authorized
20 expenditures in the fiscal year in which the expenditures
21 will occur. The biennial fee for the renewal of each of the
22 permits to engage in the practice of public accountancy
23 specified in Section 5070 shall not exceed two hundred
24 fifty dollars (\$250).

25 (g) The delinquency fee shall be 50 percent of the
26 accrued renewal fee.

27 (h) The initial permit fee is an amount equal to the
28 renewal fee in effect on the last regular renewal date
29 before the date on which the permit is issued, except that,
30 if the permit is issued one year or less before it will expire,
31 then the initial permit fee is an amount equal to 50
32 percent of the renewal fee in effect on the last regular
33 renewal date before the date on which the permit is
34 issued. The board may, by regulation, provide for the
35 waiver or refund of the initial permit fee where the
36 permit is issued less than 45 days before the date on which
37 it will expire.

38 (i) The fee to be charged for filing of sponsor
39 agreements for continuing education courses shall be
40 fixed by the board at not more than one hundred dollars

1 (\$100). Universities, colleges, or other four-year
2 institutions of learning accredited by a regional or
3 national accrediting agency or association included in a
4 list of those agencies or associations published by the
5 United States Commissioner of Education under the
6 requirements of Section 253 of the Veterans'
7 Readjustment Assistance Act of 1952, known as Public
8 Law 550 of the 82nd Congress, as amended, are exempted
9 from the payment of this filing fee.

10 (j) The actual and estimated costs referred to in this
11 section shall be calculated every two years using a survey
12 of all costs attributable to the applicable subdivision.

13 (k) Upon the effective date of this section the board
14 shall fix the fees in accordance with the limits of this
15 section and, on and after July 1, 1990, any increase in any
16 fee fixed by the board shall be pursuant to regulation duly
17 adopted by the board in accordance with the limits of this
18 section.

19 (l) Fees collected pursuant to subdivisions (a) to (d),
20 inclusive, shall be fixed by the board in amounts necessary
21 to recover the actual costs of providing the service for
22 which the fee is assessed, as projected for the fiscal year
23 commencing on the date the fees become effective.

24 SEC. 48. Section 5153 of the Business and Professions
25 Code is repealed.

26 SEC. 49. Section 7622.3 of the Business and
27 Professions Code is amended to read:

28 7622.3. The program shall adopt regulations requiring
29 continuing education of 14 hours every two years for
30 licensed funeral directors. As a condition of renewal,
31 every funeral director shall certify to the program that he
32 or she has successfully completed 14 hours of continuing
33 education on or before December 31, 2000, and shall
34 certify to the program that he or she has successfully
35 completed 14 hours of continuing education on or after
36 December 31 of every even-numbered year thereafter.

37 SEC. 50. Section 7651 of the Business and Professions
38 Code is amended to read:

39 7651. The program shall adopt regulations requiring
40 continuing education of 14 hours every two years for

1 licensed embalmers. As a condition of renewal, every
2 embalmer shall certify to the program that he or she has
3 successfully completed 14 hours of continuing education
4 on or before December 31, 2000, and shall certify to the
5 program that he or she has successfully completed 14
6 hours of continuing education on or after December 31
7 of every even-numbered year thereafter.

8 SEC. 52. Section 8742 of the Business and Professions
9 Code is amended to read:

10 8742. (a) The educational qualifications and
11 experience in land surveying, which an applicant for the
12 second division examination shall possess, shall not be less
13 than one of the following prescribed criteria:

14 (1) Graduation from a four-year curriculum with an
15 emphasis in land surveying approved by the board or
16 accredited by a national or regional accrediting agency
17 recognized by the United States Office of Education at a
18 postsecondary educational institution and two years of
19 actual broad based progressive experience in land
20 surveying, including one year of responsible field training
21 and one year of responsible office training, satisfactory to
22 the board.

23 (2) Actual broad based progressive experience in land
24 surveying for at least six years, including one year of
25 responsible field training and one year of responsible
26 office training, satisfactory to the board.

27 (3) Registration as a civil engineer with two years of
28 actual broad based progressive experience in land
29 surveying satisfactory to the board.

30 (b) With respect to ~~applicants~~ *for an applicant for a*
31 license as a land surveyor, the board shall count one year
32 of postsecondary education in land surveying as one year
33 of experience in land surveying up to a maximum of four
34 years, provided the applicant has graduated from the
35 course in land surveying and the curriculum in land
36 surveying is approved by the board or is accredited by a
37 regional or national accrediting agency recognized for
38 the purpose by the United States Office of Education.
39 Each year of study in an approved or an accredited course

1 in land surveying without graduation shall be counted the
2 same as one-half year of experience.

3 Each applicant claiming equivalent credit for
4 education may be required to produce a complete
5 transcript of all college level courses completed.

6 Until January 1, 2000, the board may, at its discretion,
7 confer credit as experience in land surveying, not in
8 excess of two years, for successfully passing the first
9 division of the examination prescribed in Section 8741.

10 SEC. 53. Section 8773.1 of the Business and
11 Professions Code is amended to read:

12 8773.1. The board shall by regulation provide and
13 prescribe the information which shall be necessary to be
14 included in the corner record and the board shall
15 prescribe the form in which such corner record shall be
16 submitted and filed, and the time limits within which the
17 form shall be filed.

18 SEC. 54. Section 8773.2 of the Business and
19 Professions Code is amended to read:

20 8773.2. (a) A “corner record” submitted to the
21 county surveyor or engineer shall be examined by him or
22 her for compliance with subdivision (d) of Section 8765
23 and Sections 8773, 8773.1, and 8773.4, endorsed with a
24 statement of his or her examination, and filed with the
25 county surveyor or returned to the submitting party
26 within 20 working days after receipt.

27 (b) In the event the submitted “corner record” fails to
28 comply with the examination criteria of subdivision (a),
29 the county surveyor or engineer shall return it to the
30 person who submitted it together with a written
31 statement of the changes necessary to make it conform to
32 the requirements of subdivision (a). The licensed land
33 surveyor or registered civil engineer submitting the
34 corner record may then make the changes in compliance
35 with subdivision (a) and resubmit the corner record for
36 filing. The county surveyor or engineer shall file the
37 corner record within 10 working days after receipt of the
38 resubmission.

39 (c) If the matters appearing on the corner record
40 cannot be agreed upon by the licensed land surveyor or

1 the registered civil engineer and the county surveyor
2 within 10 working days after the licensed land surveyor
3 or registered civil engineer resubmits and requests the
4 corner record be filed without further change, an
5 explanation of the differences shall be noted on the
6 corner record and it shall be submitted to and filed by the
7 county surveyor. When the county surveyor places an
8 explanatory note on a corner record, the county surveyor
9 shall transmit a copy of the filed corner record within 10
10 working days of the filing to the licensed land surveyor or
11 registered civil engineer who submitted the corner
12 record.

13 (d) The corner record filed with the county surveyor
14 of any county shall be securely fastened by him or her into
15 a suitable book provided for that purpose.

16 (e) A charge for examining, indexing, and filing the
17 corner record may be collected by the county surveyor,
18 not to exceed the amount required for the recording of
19 a deed.

20 SEC. 55. Section 13660 of the Business and Professions
21 Code is amended to read:

22 13660. (a) Every person, firm, partnership,
23 association, trustee, or corporation that operates a service
24 station shall provide, upon request, refueling service to a
25 disabled driver of a vehicle that displays a disabled
26 person's plate or placard, or a disabled veteran's plate,
27 issued by the Department of Motor Vehicles. The price
28 charged for the motor vehicle fuel shall be no greater
29 than that which the station otherwise would charge the
30 public generally to purchase motor vehicle fuel without
31 refueling service.

32 (b) Any person or entity specified in subdivision (a)
33 that operates a service station shall be exempt from this
34 section during hours when:

35 (1) Only one employee is on duty.

36 (2) Only two employees are on duty, one of whom is
37 assigned exclusively to the preparation of food.

38 As used in this subdivision, the term "employee" does
39 not include a person employed by an unrelated business

1 that is not owned or operated by the entity offering motor
2 vehicle fuel for sale to the general public.

3 (c) (1) Every person, firm, partnership, association,
4 trustee, or corporation required to provide refueling
5 service for persons with disabilities pursuant to this
6 section shall post the following notice in a manner and
7 single location that is conspicuous to a driver seeking
8 refueling service:

9
10 “Service to Disabled Persons

11
12 Disabled individuals properly displaying a disabled
13 person’s plate or placard, or a disabled veteran’s plate,
14 issued by the Department of Motor Vehicles, are entitled
15 to request and receive refueling service at this service
16 station for which they may not be charged more than the
17 self-service price. For information regarding
18 enforcement of laws providing for access to refueling
19 services for persons with disabilities, you may call the
20 California Assistive Technology System at (800)
21 390-2699.”

22
23 (2) If refueling service is limited to certain hours
24 pursuant to an exemption set forth in subdivision (b), the
25 notice required by paragraph (1) shall also specify the
26 hours during which refueling service for persons with
27 disabilities is available.

28 (3) Every person, firm, partnership, association,
29 trustee, or corporation that, consistent with subdivision
30 (b), does not provide refueling service for persons with
31 disabilities during any hours of operation shall post the
32 following notice in a manner and single location that is
33 conspicuous to a driver seeking refueling service:

34
35 “No Service for Disabled Persons

36
37 This service station does not provide refueling service
38 for disabled individuals. For information regarding
39 enforcement of laws providing for access to refueling
40 services for persons with disabilities, you may call the

1 California Assistive Technology System at (800)
2 390-2699.”

3

4 (d) During the county sealer’s normal petroleum
5 product inspection of a service station, the sealer shall
6 verify that a sign has been posted in accordance with
7 subdivision (c). If a sign has not been posted, the sealer
8 shall issue a notice of violation to the owner or agent. The
9 sealer shall be reimbursed, as prescribed by the
10 department, from funds provided under Chapter 14. If
11 substantial, repeated violations of subdivision (c) are
12 noted at the same service station, the sealer shall refer the
13 matter to the appropriate local law enforcement agency.

14 (e) The local law enforcement agency shall, upon the
15 verified complaint of any person or public agency,
16 investigate the actions of any person, firm, partnership,
17 association, trustee, or corporation alleged to have
18 violated this section. If the local law enforcement agency
19 determines that there has been a denial of service in
20 violation of this section, or a substantial or repeated
21 failure to comply with subdivision (c), the agency shall
22 levy the fine prescribed in subdivision (f).

23 (f) Any person who, as a responsible managing
24 individual setting service policy of a service station, or as
25 an employee acting independently against the set service
26 policy, acts in violation of this section is guilty of an
27 infraction punishable by a fine of one hundred dollars
28 (\$100) for the first offense, two hundred dollars (\$200) for
29 the second offense, and five hundred dollars (\$500) for
30 each subsequent offense.

31 (g) In addition to those matters referred pursuant to
32 subdivision (e), the city attorney, the district attorney, or
33 the Attorney General, upon his or her own motion, may
34 investigate and prosecute alleged violations of this
35 section. Any person or public agency may also file a
36 verified complaint alleging violation of this section with
37 the city attorney, district attorney, or Attorney General.

38 (h) Enforcement of this section may be initiated by
39 any intended beneficiary of the provisions of this section,
40 his or her representatives, or any public agency that

1 exercises oversight over the service station, and the
2 action shall be governed by Section 1021.5 of the Code of
3 Civil Procedure.

4 (i) An annual notice setting forth the provisions of this
5 section shall be provided by the Board of Equalization to
6 every person, firm, partnership, association, trustee, or
7 corporation that operates a service station.

8 (j) A notice setting forth the provisions of this section
9 shall be printed on each disabled person's placard issued
10 by the Department of Motor Vehicles on and after
11 January 1, 1999. A notice setting forth the provisions of
12 this section shall be provided to each person issued a
13 disabled person's or disabled veteran's plate on and after
14 January 1, 1998.

15 (k) For the purposes of this action "refueling service"
16 means the service of pumping motor vehicle fuel into the
17 fuel tank of a motor vehicle.

18 SEC. 56. Section 11371 of the Government Code is
19 amended to read:

20 11371. (a) There is within the Office of
21 Administrative Hearings a Medical Quality Hearing
22 Panel, consisting of no fewer than five full-time
23 administrative law judges. The administrative law judges
24 shall have medical training as recommended by the
25 Division of Medical Quality of the Medical Board of
26 California and approved by the Director of the Office of
27 Administrative Hearings.

28 (b) The director shall determine the qualifications of
29 panel members, supervise their training, and coordinate
30 the publication of a reporter of decisions pursuant to this
31 section. The panel shall include only those persons
32 specifically qualified and shall at no time constitute more
33 than 25 percent of the total number of administrative law
34 judges within the Office of Administrative Hearings. If
35 the members of the panel do not have a full workload,
36 they may be assigned work by the Director of the Office
37 of Administrative Hearings. When the medically related
38 case workload exceeds the capacity of the members of the
39 panel, additional judges shall be requested to be added to
40 the panels as appropriate. When this workload overflow



1 occurs on a temporary basis, the Director of the Office of
2 Administrative Hearings shall supply judges from the
3 Office of Administrative Hearings to adjudicate the cases.

4 (c) The decisions of the administrative law judges of
5 the panel, together with any court decisions reviewing
6 those decisions, shall be published in a quarterly “Medical
7 Discipline Report,” to be funded from the Contingent
8 Fund of the Medical Board of California.

9 (d) The administrative law judges of the panel shall
10 have panels of experts available. The panels of experts
11 shall be appointed by the Director of the Office of
12 Administrative Hearings, with the advice of the Medical
13 Board of California. These panels of experts may be called
14 as witnesses by the administrative law judges of the panel
15 to testify on the record about any matter relevant to a
16 proceeding and subject to cross-examination by all
17 parties, and Section 11430.30 does not apply in a
18 proceeding under this section. The administrative law
19 judge may award reasonable expert witness fees to any
20 person or persons serving on a panel of experts, which
21 shall be paid from the Contingent Fund of the Medical
22 Board of California.

23 (e) This section shall remain in effect only until
24 January 1, 2003, and as of that date is repealed, unless a
25 later enacted statute, which is enacted before January 1,
26 2003, deletes or extends that date.

27 SEC. 57. Section 11529 of the Government Code is
28 amended to read:

29 11529. (a) The administrative law judge of the
30 Medical Quality Hearing Panel established pursuant to
31 Section 11371 may issue an interim order suspending a
32 license, or imposing drug testing, continuing education,
33 supervision of procedures, or other license restrictions.
34 Interim orders may be issued only if the affidavits in
35 support of the petition show that the licensee has engaged
36 in, or is about to engage in, acts or omissions constituting
37 a violation of the Medical Practice Act or the appropriate
38 practice act governing each allied health profession, or is
39 unable to practice safely due to a mental or physical
40 condition, and that permitting the licensee to continue to

1 engage in the profession for which the license was issued
2 will endanger the public health, safety, or welfare.

3 (b) All orders authorized by this section shall be issued
4 only after a hearing conducted pursuant to subdivision
5 (d), unless it appears from the facts shown by affidavit
6 that serious injury would result to the public before the
7 matter can be heard on notice. Except as provided in
8 subdivision (c), the licensee shall receive at least 15 days'
9 prior notice of the hearing, which notice shall include
10 affidavits and all other information in support of the
11 order.

12 (c) If an interim order is issued without notice, the
13 administrative law judge who issued the order without
14 notice shall cause the licensee to be notified of the order,
15 including affidavits and all other information in support
16 of the order by a 24-hour delivery service. That notice
17 shall also include the date of the hearing on the order,
18 which shall be conducted in accordance with the
19 requirement of subdivision (d), not later than 20 days
20 from the date of issuance. The order shall be dissolved
21 unless the requirements of subdivision (a) are satisfied.

22 (d) For the purposes of the hearing conducted
23 pursuant to this section, the licentiate shall, at a
24 minimum, have the following rights:

25 (1) To be represented by counsel.

26 (2) To have a record made of the proceedings, copies
27 of which may be obtained by the licentiate upon payment
28 of any reasonable charges associated with the record.

29 (3) To present written evidence in the form of
30 relevant declarations, affidavits, and documents.

31 The discretion of the administrative law judge to
32 permit testimony at the hearing conducted pursuant to
33 this section shall be identical to the discretion of a
34 superior court judge to permit testimony at a hearing
35 conducted pursuant to Section 527 of the Code of Civil
36 Procedure.

37 (4) To present oral argument.

38 (e) Consistent with the burden and standards of proof
39 applicable to a preliminary injunction entered under
40 Section 527 of the Code of Civil Procedure, the

1 administrative law judge shall grant the interim order
2 where, in the exercise of discretion, the administrative
3 law judge concludes that:

4 (1) There is a reasonable probability that the
5 petitioner will prevail in the underlying action.

6 (2) The likelihood of injury to the public in not issuing
7 the order outweighs the likelihood of injury to the
8 licensee in issuing the order.

9 (f) In all cases where an interim order is issued, and an
10 accusation is not filed and served pursuant to Sections
11 11503 and 11505 within 15 days of the date in which the
12 parties to the hearing on the interim order have
13 submitted the matter, the order shall be dissolved.

14 Upon service of the accusation the licensee shall have,
15 in addition to the rights granted by this section, all of the
16 rights and privileges available as specified in this chapter.
17 If the licensee requests a hearing on the accusation, the
18 board shall provide the licensee with a hearing within 30
19 days of the request, unless the licensee stipulates to a later
20 hearing, and a decision within 15 days of the date the
21 decision is received from the administrative law judge, or
22 the board shall nullify the interim order previously issued,
23 unless good cause can be shown by the Division of
24 Medical Quality for a delay.

25 (g) Where an interim order is issued, a written
26 decision shall be prepared within 15 days of the hearing,
27 by the administrative law judge, including findings of fact
28 and a conclusion articulating the connection between the
29 evidence produced at the hearing and the decision
30 reached.

31 (h) Notwithstanding the fact that interim orders
32 issued pursuant to this section are not issued after a
33 hearing as otherwise required by this chapter, interim
34 orders so issued shall be subject to judicial review
35 pursuant to Section 1094.5 of the Code of Civil Procedure.
36 The relief which may be ordered shall be limited to a stay
37 of the interim order. Interim orders issued pursuant to
38 this section are final interim orders and, if not dissolved
39 pursuant to subdivision (c) or (f), may only be challenged
40 administratively at the hearing on the accusation.

(i) The interim order provided for by this section shall be:

(1) In addition to, and not a limitation on, the authority to seek injunctive relief provided for in the Business and Professions Code.

(2) A limitation on the emergency decision procedure provided in Article 13 (commencing with Section 11460.10) of Chapter 4.5.

SEC. 58. Section 11166 of the Health and Safety Code is amended to read:

11166. No person shall fill a prescription for a controlled substance classified in Schedule II 14 or more days after the date written on the prescription by the prescriber. No person shall knowingly fill a mutilated or forged or altered prescription for a controlled substance except for the addition of the address of the person for whom the controlled substance is prescribed as provided by paragraph (3) of subdivision (b) of Section 11164.

SEC. 59. Section 11167 of the Health and Safety Code is repealed.

SEC. 60. Section 11167 is added to the Health and Safety Code, to read:

11167. Notwithstanding subdivision (a) of Section 11164, in an emergency where failure to issue a prescription may result in loss of life or intense suffering, an order for a Schedule II controlled substance may be dispensed on an oral, written, or electronic data transmission order, subject to all of the following requirements:

(a) The order contains all information required by subdivision (a) of Section 11164.

(b) Any written order is signed and dated by the prescriber in indelible pencil or ink, and the pharmacy reduces any oral or electronic data transmission order to writing prior to actually dispensing the controlled substance.

(c) The prescriber provides a triplicate prescription, completed as provided by subdivision (a) of Section 11164, by the seventh day following the transmission of the initial order; a postmark by the seventh day following

1 transmission of the initial order shall constitute
2 compliance.

3 (d) If the prescriber fails to comply with subdivision
4 (b), the pharmacy shall so notify the Bureau of Narcotic
5 Enforcement in writing within 144 hours of the
6 prescriber's failure to do so and shall make and retain a
7 written, readily retrievable record of the prescription,
8 including the date and method of notification of the
9 Bureau of Narcotic Enforcement.

10 SEC. 61. No reimbursement is required by this act
11 pursuant to Section 6 of Article XIII B of the California
12 Constitution for certain costs that may be incurred by a
13 local agency or school district because in that regard this
14 act creates a new crime or infraction, eliminates a crime
15 or infraction, or changes the penalty for a crime or
16 infraction, within the meaning of Section 17556 of the
17 Government Code, or changes the definition of a crime
18 within the meaning of Section 6 of Article XIII B of the
19 California Constitution.

20 However, notwithstanding Section 17610 of the
21 Government Code, if the Commission on State Mandates
22 determines that this act contains other costs mandated by
23 the state, reimbursement to local agencies and school
24 districts for those costs shall be made pursuant to Part 7
25 (commencing with Section 17500) of Division 4 of Title
26 2 of the Government Code. If the statewide cost of the
27 claim for reimbursement does not exceed one million
28 dollars (\$1,000,000), reimbursement shall be made from
29 the State Mandates Claims Fund.

30 Notwithstanding Section 17580 of the Government
31 Code, unless otherwise specified, the provisions of this act
32 shall become operative on the same date that the act
33 takes effect pursuant to the California Constitution.

